



Robert McVey
January 5, 2005

North American Specialty Insurance Company
vs. Mary & Josephine Corp. and Matteo Russo

VOLUME I - 1

INDEX

1 FOR THE UNITED STATES DISTRICT COURT
2 CIVIL ACTION NO. 04-10374-WGY
3
4
5 NORTH AMERICAN SPECIALTY
6 INSURANCE COMPANY,
7 Plaintiff,
8 MARY & JOSEPHINE CORP. and
9 MATTEO RUSSO,
10 Defendants.
* * * * *

11
12 **DEPOSITION OF ROBERT McVEY**, a witness
13 called on behalf of the Defendant, Mary &
14 Josephine Corp., pursuant to the Federal Rules
15 of Civil Procedure before Jo Anne M. Shields,
16 Professional Shorthand Reporter and Notary
17 Public in and for the Commonwealth of
18 Massachusetts, at the Law Offices of Joseph G.
19 Abronovitz, P.C., 858 Washington Street,
20 Dedham, Massachusetts, on Wednesday, January 5,
21 2005, commencing at 10:00 a.m.

22
23 DUNN & GOUDREAU COURT REPORTING SERVICE, INC.
24 One State Street
Boston, Massachusetts 02109
Telephone (617) 742-6900

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11 **EXHIBITS**
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No. Page
1 Notice of Deposition 5

1 APPEARANCES:
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16 for the Defendant, Matteo Russo
17
18 ALSO PRESENT:
19 William J. Scola
20
21
22
23
24

STIPULATIONS

1 It is stipulated by and between
2 counsel for the respective parties that the
3 deposition transcript is to be read and signed
4 by the deponent under the pains and penalties
5 of perjury; and that the sealing and filing
6 thereof are waived; and that all objections,
7 except as to form, and motions to strike are
8 reserved to the time of trial.
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PROCEDINGS

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Robert McVey
January 5, 2005

North American Specialty Insurance Company
vs. Mary & Josephine Corp. and Matteo Russo

[Renotice of Deposition marked as McVey
Exhibit No. 1.]

MR. PETTINGELL: Okay. So referring to Exhibit 1, I wonder if you could identify who you've brought and who's going to be responsive to which alga- -- which paragraphs.

MR. LANGER: Present on behalf or as designees for North American Specialty Insurance Company are William Scola, Robert McVey, and Lynanne Houde.

With regard to Paragraph 1 of the notice, which asks for information regarding the recitation in Paragraph 14 of the Complaint for Declaratory Judgment, that, "On October 3rd, 2003, Defendant Russo, on behalf of Defendant M&J, called OMA and advised that the Fishing Vessel MARY & JOSEPHINE had not been fishing since May 2003," both Ms. Houde and Mr. McVey will testify regarding conversations with Mr. Russo.

Paragraph 2 of the notice asked that we produce -- that NAS produce a witness regarding the allegations in Paragraph 15 of the

Complaint for Declaratory Judgment, that,

"Defendant Russo specifically requested that the Vessel be deemed to have had 'port risk' coverage starting May 1, 2003 rather than full operational coverage and stated that Defendants did not want any crew protection and indemnity coverage during the period that the Vessel was not fishing." Mr. McVey will respond to that.

Paragraph 3 asks for a witness regarding Paragraph 16 of the Complaint for Declaratory Judgment, to wit, "OMIA immediately notified NAS of Defendant's request and procured a credit of \$1,425.00 for the initial level of P&I coverage and an additional credit of \$519.00 for the excess P&I coverage. Such credit was provided for the P&I coverage for 1/2 crewman originally covered by the policy during the policy year August 13, 2002 through August 13, 2003." Ms. Houde will respond to that.

Paragraph 14 -- excuse me -- 4 asks that NAS produce a witness to testify regarding the allegations in Paragraph 17 of the Complaint for Declaratory Judgment, to wit, "It was understood and agreed by the parties that NAS

would continue to provide port risk only coverage with no coverage for any crewmen until

Defendants advised Vessel had returned to active fishing, at which point Plaintiff would reinstate full operational coverage.

"Additional credits would accrue to M&J during this period of port risk coverage, which credits would be applied either upon the Vessel's return to full operational coverage or the end of the policy year on August 13th, 2004, whichever occurred first." That would be both Mr. McVey and Ms. Houde.

Paragraph 5 asked that NAS provide a witness regarding allegations in Paragraph 18 of the Complaint for Declaratory Judgment, to wit, "On October 3, 2003 and again on November 21, 2003, OMA informed Defendants in writing that the Vessel was covered by port risk coverage only and that when the Vessel returned to full fishing operations, notice should be provided to OMA so that policy could be amended appropriately." Ms. Houde will respond to those issues.

And, finally, Paragraph 6, "What is meant

by 'port risk coverage' as same was intended either NAS or OMA during calendar year 2003,"

Mr. Scola will respond to that.

MR. PETTINGELL: All right. Fine. Thank you. I would propose that we start with Mr. McVey, followed by Ms. Houde, and then Mr. Scola. So with that, I would ask that -- I would -- I -- I think we're going to have three separate depositions.

I understand that it's a 30(b)(6) notice of the insurance carrier. But, obviously, the people you're producing also have individual knowledge that is going to be binding on them individually, as well as areas that are binding on the company. So I -- I think we need three different --

MR. LANGER: I understand you're going to swear each witness.

MR. PETTINGELL: Right.

MR. LANGER: But it is NAS that's been

noticed --

MR. PETTINGELL: I understand.

MR. LANGER: .. for this deposition. And that's why we're here. I don't represent Ocean

January 5, 2005

1 Marine Insurance Agency. So I can't represent
 2 that this is a deposition of Mr. McVey or Ocean
 3 Marine Insurance Agency because they may want
 4 to retain their own counsel and do whatever
 5 they want to do.

6 MR. PETTINGELL: I understand.

7 MR. LANGER: So --
 8 MR. PETTINGELL: What we're saying is,
 9 there's going to be three separate --

10 MR. LANGER: There'll be three -- I
 11 understand there'll be three --

12 MR. PETTINGELL: -- witnesses deposed.

13 MR. LANGER: -- three separate witnesses
 14 appearing on behalf of NAS in response to the
 15 notice of deposition.

16 MR. PETTINGELL: Fine.

17 MR. ABROMOVITZ: Let's go off the record
 18 for one second.

19 (A brief discussion was held off the
 20 record.)

21 ROBERT MCVEY, a witness called
 22 for examination by counsel for the Defendant,
 23 Mary & Josephine Corp., his identity having
 24 been stipulated to by all attorneys and duly

1 sworn by the Notary Public, was examined and
 2 testified as follows:

3 * * *

4 DIRECT EXAMINATION

5 BY MR. PETTINGELL:

6 MR. PETTINGELL: Off the record for a
 7 second.

8 (A brief discussion was held off the
 9 record.)

10 MR. PETTINGELL: I understand that

11 Mr. McVey does not have, with him, a photo ID.

12 However, he is known to us. And I think all
 13 parties are prepared to stipulate that Mr.
 14 McVey is who he claims to be. Is that agreed?

15 MR. ABROMOVITZ: Sure.

16 MR. LANGER: I -- I will stipulate that he
 17 is Robert McVey.

18 MR. PETTINGELL: All right.

19 Q. Sir, could you please state your name?

20 A. My name is Robert McVey.

21 Q. And your business address? Well, your home
 22 address, if you --

23 A. My home address is 140 Kettle Pond Drive.
 24 That's in South Kingstown, Rhode Island 02879.

1 Q. And you understand, Mr. McVey, that you are
 2 here to testify as a designate of North
 3 American Insurance Company concerning certain
 4 areas that have previously been identified in
 5 the deposition notice?

6 A. Yes.

7 Q. Fine. And I'm going to -- well, let me ask
 8 you, sir, who are you employed by?

9 A. Ocean Marine Insurance Agency.

10 Q. And, for ease of reference, can we just refer
 11 to Ocean Marine Insurance Agency from this
 12 point forward as OMI?

13 A. Yes.

14 Q. If I say that, you'll know who I mean and . . .

15 A. Yes.

16 Q. As a shorthand. What is -- first of all,
 17 what -- what does OMI do?

18 A. OMI do is an insurance agency that procures
 19 insurance mostly for commercial fishing boats.

20 Q. And where are they located?

21 A. We have our main offices in Warwick, Rhode
 22 Island. We have an office in Point Judith,
 23 Rhode Island. We have an office in Fairhaven,
 24 Rhode Island. And we have a -- a satellite

1 office in Maine.

2 Q. And, if you know, are you aware of the
 3 relationship between OMI and North American
 4 Insurance Company?

5 A. Vaguely.

6 MR. LANGER: Let -- let me just interject
 7 at this point. He can answer. But there are
 8 six very specific categories that we were
 9 supposed to produce people --

10 MR. PETTINGELL: And you have.

11 MR. LANGER: -- for. They -- one of those
 12 categories was not the relationship between
 13 OMA and NAS or NAS at all. It was very
 14 specific, factual allegations that were set
 15 forth in the Complaint. So I'll let him
 16 testify, but I -- I am going to hold everybody
 17 fairly closely to the areas that we're
 18 designating.

19 MR. PETTINGELL: Well, off the record.
 20 (A brief discussion was held off the
 21 record.)

22 MR. PETTINGELL: Mr. Langer and I have had
 23 a -- a discussion concerning questions that go
 24 beyond the scope of the six paragraphs listed

13, 2005

North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

made a phone call to Mr. Russo at the hospital where he was undergoing treatment following his injury and advised him there was no coverage because he was an owner?

A. That's not true.

Q. That's not true? Did you have a telephone conversation with him at the hospital?

A. Yes. I did.

Q. And did the topic of whether or not there was coverage for his injuries ever come up during that conversation?

A. Yes. It did.

Q. Okay. And what was the gist of the conversation you had with Mr. Russo?

A. I called Mr. Russo up to see how he was doing and he asked if there was coverage. And I said we were working on it. At this time, we didn't know.

Q. Okay. You had no discussion with him that you recollect where the issue of whether or not he was an owner of the vessel came up?

A. While he was in the hospital, again?

Q. Yes.

A. No.

80

the original document.

MR. ABROMOVITZ: Well, why don't we go off the record.

(A brief discussion was held off the record.)

(E-mail to Janet from Bob McVey dated 12/5/03 marked as McVey Exhibit No. 2.)

MR. PETTINGELL: Off the record. (A brief discussion was held off the record.)

81

(Question read back.)

Q. The document we've marked as Exhibit 2, can you -- can you tell us what that document is, please, sir?

A. This is a correspondence that I sent to Sunderland Marine regarding the accident Matt Russo had.

Q. And what's the date of the correspondence?

A. December 5th.

Q. This is --

A. 200 --

Q. -- an e-mail, is it?

A. Yes. It is.

Q. And it says "From: Deweydog@aol.com."

82

1 A. Yes.

2 Q. Is that your -- or was that your e-mail address

3 at the -- the time, December 5th, 19 -- 2003?

4 A. Yes.

5 Q. And I wonder, sir, if you could read the first

6 paragraph into the record.

7 A. I have just finished going over the claim

8 involving Matt Russo and realized that he is

9 covered as a crew member. His father Sal is

10 listed as 100% -- 10% ownership with Matt

11 being the captain. Matt is listed as

12 part-owner on their other 2 vessels, the F/V

13 Josephine and the F/V Damariscotta. They are

14 covered for three to four men on the Mary &

15 Josephine."

16 Q. So as of December 5th, 2003 when you sent this

17 e-mail -- and this e-mail went to who?

18 A. Janet Cook.

19 Q. And who's Janet Cook?

20 A. She's the claims advisor of the claims, in

21 charge of claims at Sunderland Marine.

22 Q. In England?

23 A. Yes.

24 Q. All right. At the time that you sent Ms. Cook

83

1 Q. Okay. I'd like to show you a -- I'd like to

2 show you a document --

3 MR. PETTINGELL: And for the record -- for

4 your purposes, this is Bates stamped 000369.

5 MR. LANGER: This highlighting is not part

6 of the original document, I'm assuming.

7 MR. PETTINGELL: That's correct. That's my

8 highlighting. It's the only way I can read

9 them.

10 Q. -- and ask, sir, if you'd look at that and tell

11 me whether or not you recognize it.

(A brief discussion was held off the

12 record.)

13 MR. LANGER: The question is, do you

14 recognize the document?

15 A. Yeah. Yes. I recognize it.

16 Q. All right. Can you tell me what that document

17 is?

18 MR. ABROMOVITZ: Can we mark it first?

19 MR. PETTINGELL: All right. Let's mark it

20 as Exhibit 2.

21 MR. LANGER: With the understanding that

22 the highlighting is --

23 MR. PETTINGELL: The highlighting is not on

this e-mail we've marked as Exhibit 2, you were of the opinion that Mr. Russo was covered as a crew member; he was entitled to coverage under the policy?

MR. LANGER: Objection.

A. Not necessarily.

Q. Perhaps you can explain to me then what you meant when you said you -- you "just finished going over the claim involving Matt Russo and realized that he is covered as a crew member?"

A. Well, we didn't realize at the time that he was on port risk.

Q. You didn't know --

A. Because -- we -- we knew, but it kind of slipped out.

Q. So at the ti --

A. Once --

Q. I -- I beg your pardon. I -- I don't want to cut you off. Go ahead.

A. Once we went back over the claim, we realized that the boat wasn't fishing; and it was on port risk.

Q. I see. So when you -- when you sent this e-mail marked as Exhibit 2, you had forgotten

85

that the vessel Mr. Russo was working on was on port risk?

A. No. I hadn't forgotten. This is, pretty much,

a generic makeup of the course of the year.

They were covered for three to four men. And when the boat was actively fishing, when they were covered, Matt was a covered crewman.

Q. Uh-huh. Well, I'm referring to the first sentence in the first paragraph where you state, "I have just finished going over the claim involving Matt Russo and realized that he is covered as a crew member."

A. Yeah. When the boat was actively fishing, he was listed as a crew member.

Q. Well, coming up to the top, the subject of this e-mail is "Matt Russo F/V Mary and Josephine." And, in the first paragraph, you're talking about the "claim involving Matt Russo." So when you say he's covered as a crew member, that doesn't mean that you believed that he was -- that his claim was a covered claim under the policy?

MR. LANGER: Objection.

A. Correct.

1 MR. LANGER: Form of the question. Wait
2 till he finishes his question --
3 THE WITNESS: Sorry.
4 MR. LANGER: -- before you answer it.
5 Q. You say that wha -- my statement was correct?
6 A. Repeat it again.
7 MR. PETTINGELL: Can I have it read back,
8 please.
9 (Question read back.)

10 MR. LANGER: Objection to the form.
11 Foundation. Calls for a legal conclusion.

12 MR. PETTINGELL: Well, you stated your
13 objection and the basis for it. And I thank
14 you. But this is Mr. McVey's language, and I'm
15 trying to understand what he means when he says
16 "covered."

17 MR. LANGER: Well, then, ask him what he
18 means, rather than telling him what you think
19 he means.
20 MR. PETTINGELL: Well, I'll ask my question
21 the way I want.

22 MR. LANGER: Fine. I'll object to it.
23 MR. PETTINGELL: And you can object to it.
24 Q. At the time that you wrote this e-mail,

87

1 Mr. McVey, you were aware that Sunderland was
2 denying coverage. At least, one of the bases
3 for denying coverage was that Mr. Russo was an
4 owner of the vessel.

5 MR. LANGER: Object to the form and the
6 foundation of the question.

7 A. I think they were looking into the fact that he
8 might have been an owner, but I don't think the
9 claim was directly denied because he was an
10 owner.

11 Q. All right. Do you know whether or not the
12 claim was ever denied on the basis that
13 Mr. Russo was an owner of the vessel?

14 A. No. I don't.

15 Q. Okay. In any event, the first paragraph of
16 Exhibit 2, referring to that first paragraph of
17 Exhibit 2, is it fair to say you were telling
18 Ms. Cook that he was not an owner?

19 A. Yes.

20 Q. And your statement that you -- and I quote --
21 "I have finished going over the claim involving
22 Matt Russo and realized that he is covered as a
23 crew member."

24 A. When he was being a crew when the boat was

MR. PETTINGELL: An unmarked copy of this. Let me show you a document -- this is Bates stamped 382 -- and ask if you'd take a moment and look at it.

MR. PETTINGELL: I'm going to have this marked as Exhibit 3.

(E-mail to Bob McVey from Craig McBurnie dated 12/8/03 marked as McVey Exhibit No. 3.)

9 Q. Have you had a chance to review it?

10 A. Yes.

11 MR. PETTINGELL: Okay. Why don't we mark that as the next exhibit, as Exhibit 3.

12 THE WITNESS: We marked it already.

13 MR. LANGER: We marked it.

14 MR. ABRAMOVITZ: It's marked.

15 Q. Can you tell us what that document, Exhibit 3, is?

16 A. It's correspondence to me from Craig McBurnie from Sunderland Marine.

17 Q. Okay. Now, calling your attention to the third paragraph of that correspondence, was this the first indication you received from Sunderland that one of the bases for their denial of

1 coverage for Mr. Russo's claim was that 2 Sunderland had deleted crew P&I coverage 3 entirely until fishing recommenced?

4 MR. LANGER: Objection to the form and 5 foundation of the question. Assumes facts not 6 in evidence.

7 A. Could you read that back, please?

8 (Question read back.)

9 A. I'm not sure.

10 Q. Do you remember having any discussions with 11 anybody at Sunderland, telephone conversations, 12 where the fact that crew P&I coverage had been 13 deleted entirely while the vessel was on port 14 risk at any time prior to this December 8th, 15 2003 correspondence?

16 MR. LANGER: You mean, between the date of 17 the accident and December 8th?

18 MR. PETTINGELL: Yes. Thank you.

19 A. I can't recollect any.

20 Q. Now, there's a handwritten notation that 21 appears, "Per Bill." Do you see that?

22 A. Yes.

23 Q. Whose handwriting is that, if you know?

24 A. I really don't know.

1 Q. Okay. Can you read the handwriting to 2 yourself?

3 A. Yes.

4 Q. And do you have any knowledge as to what that 5 refers to?

6 MR. LANGER: Don't guess. If you know, 7 fine.

8 A. I don't.

9 Q. Okay. Fair enough. That's not your 10 handwriting?

11 A. No.

12 Q. Well, I suspect that the "Bill" is Mr. Scola. 13 So we'll -- we can always go on to him when we 14 take his deposition. Now, Mr. Russo's 15 corporation had obtained insurance for the Mary 16 & Josephine through OMNI for two years prior to 17 the incident in which he was injured on his 18 boat in December of 2003; is that correct?

19 A. That's correct.

20 Q. And were you involved in -- strike that. And 21 I -- I think you testified back in January that 22 you were involved in the initial placement of 23 coverage?

24 A. Yes.

2005

North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

98

have it. No. I do not have it.

MR. PETTINGELL: Let's go off the record.

[I save a lot of time if we can find it.

(A brief discussion was held off the record.)

MR. PETTINGELL: With Mr. Langer's assistance, we found the fax.

MR. SCOLA: Then it must be the calculation that's missing.

MR. PETTINGELL: And it appears that it was a fax sent by Ms. Houde. So --

MR. ABROMOVITZ: Do you want to mark it

now, Dick, or no?

MR. LANGER: He referred to it. We might as well mark it.

MR. ABROMOVITZ: Yeah.

MR. PETTINGELL: Yeah. Why don't we mark it.

(Fax to Tracy Tate from Lynn Houde dated 10/3/03 consisting of one page marked as

McVey Exhibit No. 4.)

MR. PETTINGELL: And this is Exhibit 4?

COURT REPORTER: Yes.

Q. Mr. McVey, I'd like you to look at what we've

96

marked as Exhibit 4 and ask you if, to your knowledge, that is the fax that you were referring to and which, apparently, is referred to in the correspondence to you that we've

marked as Exhibit 3?

MR. LANGER: Just to make it clear, you just asked him whether it was a -- a fax he referred to, and then you said in the

correspondence to him. So can you just clarify the question?

Q. Well, have you seen the document we've marked as Exhibit 4 before?

A. No.

Q. Okay. Following your receipt of the correspondence marked as Exhibit 3 from Craig McDurnie, which made reference to your fax of

October 3rd last year -- excuse me --

October 3rd, did you make any effort to see what he was referring to?

A. I wouldn't have any reason to.

Q. Well, so the answer to my question is, you did not?

A. No.

Q. Okay. And, I take it -- I think I take it that

97

providing insurance for have to be surveyed every year, don't they, prior to renewal?

A. Approximately, every year.

Q. All right. And was this done with regard to

Mr. Russo's vessel or the Mary & Josephine?

MR. LANGER: At which point?

MR. PETTINGELL: Prior to the renewal.

MR. LANGER: Which renewal?

MR. PETTINGELL: 2003, Policy Year 3.

99

the document marked Exhibit 4 you've never seen before today?

A. I don't recollect seeing it before. No.

Q. Then we can move on. Now, at the time that you and Mr. Russo had a conversation about the

vessel going on port risk, what was your understanding of the purpose for the vessel

going on port risk?

A. It was to save Mr. Russo some premium.

Q. And that's because the vessel hadn't been fishing. So he was trying to retroactively save some premium?

A. Correct.

Q. Was there any other reason that the boat was to go on port risk that you were aware of?

A. Not that I'm aware of.

Q. Okay. Do you recall whether or not -- strike that. We had some discussion last January

about an annual survey of vessels that were being insured with the Sunderland being

undertaken. Do you recall that?

A. Vaguely, I recall.

Q. All right. And it's a requirement of

Sunderland that the vessels that it is

99

providing insurance for have to be surveyed every year, don't they, prior to renewal?

A. Approximately, every year.

Q. All right. And was this done with regard to

Mr. Russo's vessel or the Mary & Josephine?

MR. LANGER: At which point?

MR. PETTINGELL: Prior to the renewal.

MR. LANGER: Which renewal?

MR. PETTINGELL: 2003, Policy Year 3.

99

A. I don't remember.

Q. Do you recall any year -- now, there were three policies issued for this vessel; is that correct?

A. I believe so.

Q. The first year covered from August of 2001 to

August of 2002?

A. Yes.

Q. The second year covered from August of 2002 to

August of 2003?

A. Yes.

Q. And the vessel was up for renewal, which would have covered from August of 2003 to August of

2004?

A. Yes.

3, 2005

North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

care of recommendations on the Mary & Josephine during the period that the vessel was on port risk prior to taking the boat out fishing for Policy Year 3?

A. I don't.

Q. I asked if you recall. Are you saying you -- you just don't have a memory one way or the other? Or that definitely didn't happen?

A. I don't think it happened.

Q. You don't think it happened?

A. It -- it -- not to my recollection, it didn't happen.

Q. Okay. I think we're at the same point. Did you ever tell Mr. Russo that there was no crew P&I cover while his vessel -- or the vessel he was captain of was on port risk?

A. I discussed it with him when he called me in the beginning of October. So I probably would have said, we'll try to take care of it.

Q. I'm not certain that was responsive to my question. Did you ever tell Mr. Russo that while his boat -- the boat that he was captain of was on port risk, there was no crew P&I coverage --

105

A. Yes. I did.

Q. -- for the policy? You have a memory of doing that?

A. Yeah.

Q. Okay. When did you tell him that, sir?

A. Probably when he called me in October.

Q. You say "probably."

A. Yeah.

Q. Do you have a memory of telling him in October?

A. Vaguely.

Q. Of what year?

A. 2003.

Q. Did you ever tell him at any time that there was no crew coverage available if the vessel was on port risk at any time before October of 2003?

A. I don't recall.

Q. But you do have a memory of telling him that in October of 2003?

A. We discussed it, I believe, when he called me in October. Yes.

Q. Could you tell us about that conversation, please, sir?

A. I had a call from Matt Russo, telling me that

107

A. That's correct.

Q. And that's automatic. Right?

A. Yeah.

Q. That's just by virtue of having a boat go on port risk. There's vessel P&I coverage, but the crew P&I coverage is cancelled?

A. Is nonexistent.

Q. Is nonexistent. That's your understanding?

A. Yes.

Q. And that's your understanding based upon your 16 years of experience in the industry?

A. Yes.

Q. And someone at OMNI told you that. You don't remember who?

MR. LANGER: Objection. It's been asked and answered. He's been through this twice now. Do we need to go through it again?

MR. PETTINGELL: Yeah.

MR. LANGER: Well, I'm going to instruct him --

MR. PETTINGELL: Well, we're not --

MR. LANGER: -- not to answer that for -- you're -- you're just asking him the same questions again and again.

104

the boat hadn't fished. Again, I think it's since May of 2003. It was not fishing presently, and it probably wasn't going to fish till several months into the year. And he did not want any P&I, no crew at all.

Q. Okay. And what did you respond?

A. I responded, we'll take care of it.

Q. Did you tell him, well, don't worry; there's no P&I just as soon as you put it on port risk

MR. LANGER: Objection to the form of the question.

Q. By virtue of putting it on port risk, there's no crew P&I coverage?

A. He asked me for zero P&I coverage.

Q. Right. And my question was, did you tell him, well, don't worry, it's automatic; if you put the boat on port risk coverage, there is no crew P&I cover?

A. I never use the word "automatic" in dealing with insurance issues.

Q. Well, isn't it your testimony that you understand that if the vessel is on -- if a vessel is on port risk coverage, there is no crew P&I cover?

106

the boat hadn't fished. Again, I think it's since May of 2003. It was not fishing presently, and it probably wasn't going to fish till several months into the year. And he did not want any P&I, no crew at all.

Q. Okay. And what did you respond?

A. I responded, we'll take care of it.

Q. Did you tell him, well, don't worry; there's no P&I just as soon as you put it on port risk

2005

PETTINGELL: You know, you're -- you're
going my train of thought.

MR. LANGER: Well, I don't mean to do that.

you've --

MR. PETTINGELL: But --

MR. LANGER: -- been through this --

MR. PETTINGELL: But --

MR. LANGER: -- twice.

MR. PETTINGELL: Let me finish it, and

we'll move on.

MR. LANGER: Good.

MR. PETTINGELL: Can we have my question
read back, please.

MR. ABRAMOVITZ: I'll also state -- let me
just state on the record that, in this
jurisdiction, you cannot instruct the witness
not to answer a question. You can suspend the
deposition. You can get a court order and a
protective order. You cannot tell him not to
answer a question.

MR. LANGER: Okay. Then we'll do that.

MR. PETTINGELL: It's not necessary.

Just --

MR. LANGER: Keep going.

109

MR. PETTINGELL: -- let's get this -- let's
get by this and move on.
(Question read back.)

Q. Is that correct?

A. That's correct.

Q. All right. And my question is, did you, sir,
ever tell Mr. Russo that that's what happened
if the vessel went on port risk coverage, that
the --

A. Yes.

10 A. -- would be -- you did tell him that?

11 A. (Witness indicates).

12 Q. When did you tell him that?

13 A. I don't remember exactly when I told him.

14 Q. Well, do you remember what year?

15 A. He was on and off port risk so much that it's
hard to recollect exactly when I told him, but
we discussed it.

16 Q. Now, the Mary & Josephine was covered three
policy years. Right?

17 A. Not quite three. I don't think it made it
through the third one.

18 Q. Well, there was three policy years
contemplated?

North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

110

1 A. Yes.
2 Q. And the vessel was on port risk in the first
3 policy year?
4 A. Yes.

5 Q. And coverage was placed through Sunderland?
6 A. Yes.
7 Q. Coverage was not placed by Sunderland with
8 North American Specialty Insurance Company in
9 that first policy year. It was placed with a
10 different company, wasn't it?

11 A. I believe so.

12 Q. Fairfield?

13 A. I believe, Fairfield.

14 Q. All right. And then, in the second policy
15 year, coverage was placed by Sunderland with
16 North American Specialty?

17 A. Correct.

18 Q. And the vessel went on port risk?

19 A. Correct.

20 Q. And there was a third policy issued, wasn't
21 there?

22 A. Yes.

23 Q. And coverage was placed by Sunderland with
24 North American Specialty?

111

1 A. Yes.
2 Q. And that's the policy where the vessel went on
3 port risk and was on port risk at the time of
4 Mr. Russo's injury?

5 A. Yes.

6 Q. In each of those years -- now, you've told us
7 that, in October, I think you said, or sometime
8 prior to the renewal of coverage -- perhaps, it
9 would have been earlier than October because
10 coverage was renewed for Policy Year 3
beginning in August of 2003, wasn't it?

11 A. Correct.

12 Q. And I apologize if I asked you this. Do you
13 remember when Mr. Russo and you had a
14 conversation where he indicated he wanted the
15 vessel to go on port risk?

16 MR. LANGER: Objection. It's been asked
17 and answered.
18 MR. PETTINGELL: I'm just trying to --

19 A. I'm not positive. It could have been in Oc- --

20 Q. Okay. Now, you've testified that you -- you
21 have a memory of a conversation with Mr. Russo
22 where you told him that if the vessel was on

23 Q. Well, there was three policy years
24 contemplated?

North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

5, 2005

116

1 for Policy Year 2?
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and you have an express memory not for Policy
year 3?
Correct.

Okay.
MR. PETTINGELL: I'm getting close to the
end, I think. Off the record for a second.
(A brief discussion was held off the
record.)

(Brief recess taken.)

BY MR. PETTINGELL:

MR. PETTINGELL: All right. I only have, I
think, one more area I want to go into. And
there's a document that I seem to have, in my
inimitable style, mislaid. So why don't I pass
the witness to Mr. Abromovitz, and I'll come --

with the understanding I can come back and --

oh, I found it. Too -- too late.

Q. Now, coming back to the fact that there were
three different policies issued in three
different policy years, the first one, I think
we have already established, was issued by

117

Fairfield.

A. Correct.
Q. And the next two were North American Specialty.
A. Each of those policies had different policy
numbers, didn't they, renewal policies?

A. I'm not sure of that. I'm not aware of that.
Q. Well, I show you a letter dated September 17th,
2002 from Lynanne Houde -- and -- and we don't

need to mark that -- and ask you whether that
makes reference to a renewal policy by policy
number.

MR. LANGER: Well, the document speaks for
itself.

MR. PETTINGELL: Well, I understand. But
I'm focusing the witness in on something that
he said he didn't recall.

MR. LANGER: Read the first paragraph to
yourself. For the record, Mr. Pettingell's
referring to a letter dated September 17th,
2002 from Lynanne Houde to Matteo Russo.

A. Okay.
Q. And does that refer to a policy number?
A. Yes.
Q. And that policy number would be what?

118

1 A. I have no idea.
2 Q. Well, it's because you don't have the document
3 in front of you.
4 A. You want me to read the policy number?
5 Q. Yes.
6 A. Okay. It would read DMM000003-00.
7 Q. And would that refer to the Policy No. 2 that
8 we've been referring as Policy Year 2, which
9 would be from August 13th of 2002 to
10 August 13th, 2004 --

MR. LANGER: Well, the document speaks --

Q. ... '37?

MR. LANGER: -- for itself.

MR. PETTINGELL: I understand.

A. I believe so.

Q. Okay. And I think you've already indicated
that, during that Policy Year No. 2, Mr.

Russo's vessel went on port risk?

A. Correct.

MR. PETTINGELL: Time out.
(A brief discussion was held off the
record.)

Q. Okay. Let me show you a document and ask if
you can look at it.

119

1 MR. PETTINGELL: Would you make some copies
2 of that? Then we'll make copies of this after
3 off the record.
(A brief discussion was held off the
4 record.)

5 (American Institute Port Risk Endorsement
6 dated 1/18/70 marked as McKey Exhibit
7 No. 5.)

8 (Endorsement dated 12/9/02 marked as McKey
9 Exhibit No. 6.)

10 Q. Now, looking at what we've just marked as
11 Exhibit 6, do you have that document before
12 you?

13 A. Yes.
14 Q. Have you had a chance to read it?
15 A. No. I'm reading it now.

16 (Pause.)

17 Q. Let me know, please, when you're finished
18 looking at it.

19 A. Finished.

20 Q. All right. Can you tell us what that document
21 is marked as Exhibit 6?

22 A. It looks like an endorsement.

23 Q. What's an endorsement?

13, 2005

North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

1	120	1. An endorsement is something added to an existing policy.
2		2. Would it be fair to say it's a document that's issued reflecting a policy change of some sort --
3		3. A. Yes.
4		4. Q. -- change in coverage?
5		5. A. Yes.
6		6. Q. To your knowledge, do they always issue when there's a --
7		7. A. MR. LANGER: Objection.
8		8. Q. -- change in coverage?
9		9. A. MR. LANGER: It's been asked and answered. This was covered in some detail in January. I don't know that they're always issued.
10		10. Q. Okay. And looking at the lower right-hand corner, there's reference to a policy number. Do you see that?
11		11. A. I do.
12		12. Q. And would you agree with me, sir, that that policy number that is referenced there is the policy number that is for Policy Year No. ??
13		13. A. Yeah. The same.
14		14. Q. Okay. What changes does this endorsement reflect?
15	121	1. MR. LANGER: Objection. The document speaks for itself.
16		2. A. It says "amended from Operational to Port Risk."
17		3. Q. Okay. And does it reference a particular port risk endorsement?
18		4. A. Yes.
19		5. Q. American Institute Port Risk Endorsement dated January 18, 1970?
20		6. A. Yes.
21		7. Q. Is that a policy form that you're familiar with?
22		8. A. Somewhat familiar with it.
23		9. Q. Well, you've seen it before?
24		10. A. Yes.
1	122	11. Q. Looking at the document we've marked as Exhibit 5, take a moment to look at that. (Pause.)
2		12. A. I've read it.
3		13. Q. Okay. Is Exhibit 5 the American Institute Port Risk Endorsement dated January 18, 1970 that you're somewhat familiar with?
4		14. A. Somewhat.
5		15. Q. And would you agree, sir, that Exhibit 5 is the American Institute Port Risk Endorsement referred to in Exhibit 6?
6		16. A. It's referred to. Yes.
7		17. Q. All right. So what's stated on Exhibit 6, "Adding American Institute Port Risk Endorsement" January 18, 1970, what that's referring to is what has been marked as Exhibit 5?
8		18. A. Correct.
9		19. Q. All right. Thank you. Now, coming back to Exhibit 6, there's also a change with respect to the crew complement, isn't there?
10		20. A. Yes.
11		21. Q. It says, "The Crew Complement is amended to 'Crew of 1 excluding Owners.'"
12		22. A. Correct.
13		23. Q. Now, that language doesn't appear every time a vessel is put on port risk, does it?
14		24. A. No.
15		25. Q. That's something that was done just with regard to Policy No. ??
16		26. A. That's correct.
17	123	1. Q. It says, "The Navigation Limit is amended to: Port Risk Only. Warranted No Fishing." Do you --
18		2. A. Yes.
19		3. Q. -- see that? Is that something that does appear routinely on -- on endorsements when a vessel goes on port risk?
20		4. A. Yes.
21		5. Q. All right. And reading down a little further, "Endorsement Section I & II, ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED." Do you see that language?
22		6. A. Yes.
23		7. Q. All right. And reading down a little further, "Endorsement Section I & II, ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED." Do you see that language?
24		8. A. Yes.
1		9. Q. Do you know what that means?
2		10. A. Yes.
3		11. Q. What does it mean?
4		12. A. Just what it says it means.
5		13. Q. Well, can you explain to us?
6		14. A. I'm -- I'm --
7		15. MR. LANGER: What is his understanding?
8		16. MR. PETTINGELL: Well, he said he's somewhat familiar with port risk. He said he's -- he said port risk doesn't provide a crew P&I cover. I think I'm entitled to

ey
13, 20051 correct.
2 Q. But let's say I went and visited Matt Russo,
3 who was working on the boat during the period
4 of time that that vessel P&I was in effect, and
5 I got hurt due to some defective condition on
6 the vessel and I'm not a member of the crew,
7 would I be covered?8 MR. LANGER: Objection. Calls for a legal
9 conclusion.
10 MR. ABRAMOVITZ: Well, I'm asking his
11 understanding.
12 A. I would say, probably.13 Q. Okay. And let's assume that the -- during the
14 same period of time -- this is when the vessel
15 is covered under vessel P&I and not crew P&I
16 when the vessel's tied up at the dock -- let's
17 assume that, through something done by
18 Mr. Russo as captain of the boat, the dock is
19 actually damaged. Would the vessel be covered
20 for damage to the dock, your understanding?
21 MR. LANGER: The same objection. It calls
22 for a legal conclusion.23 A. I believe it would.
24 Q. Okay. Have you seen anything in any of the132
133
134
vs. Mary & Josephine Corp., et al.1 dock in December of '03 when Matt Russo was
2 injured?
3 A. I haven't seen it.4 Q. Let's go to Exhibit No. 6, which is the
5 preceding policy year, the policy year of
6 August '02 to August of '03. What is your
7 understanding as what is meant by -- with
8 reference to a port risk endorsement of "Crew
9 of 1 excluding Owner"?10 A. Sometimes, in a situation where we know there's
11 going to be somebody on the vessel,
12 particularly if a crewman's on there as a
13 watchman or he's doing work, we suggest that
14 they keep one guy covered.
15 Q. Were you aware that at the time of Matt Russo's
16 accident in December 2003 that what Mr. Russo
17 was doing was carrying out one of the repairs
18 that was recommended by the surveyor of the
19 vessel?20 A. I was not aware of that.
21 Q. Did your office arrange for the survey on the
22 vessel for that particular policy year?
23 A. Possibly.
24 Q. Would that be something that, given your

135

1 relationship with Sunderland or NAS, if a
2 survey was requested by the underwriter that
3 your office would arrange?
4 A. It -- it could be done automatically.
5 Q. Okay. Would -- you're familiar with Marine
6 Safety Consultants, are you not?7 A. Yes.
8 Q. Are you aware that they had done a survey on
9 this particular vessel?
10 A. At what time?
11 Q. In connection with the repairs that were being
12 carried out to the outriggers at the time of
13 Matt Russo's accident.
14 A. Was I aware at what point?15 Q. Sure. Let me ask the question this way.
16 A. Please.
17 Q. Matt Russo was injured during the course of
18 performing some work in connection with
19 installing new outriggers while the vessel was
20 at the dock in Gloucester. Correct?
21 A. I believe so. I'm not exactly sure what he was
22 doing. But --
23 Q. Well, take a look at your Exhibit No. 2, which
24 is your e-mail to Janet at Sunderland dated 05DUNN & Goudreau
(617) 742-6900

January
3, 2005North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

December of 2003. And take a look at the last paragraph of that -- of that letter. And I'll quote into the record. "A brief synopsis of the accident: They were installing new outriggers at the dock and Matt was atop outrigger measuring the stays when the cleat holding the outrigger let go and crashed down with Matt on top of it."

Did I read that correctly?

A. Yes.

Q. Do you know why it was that Matt Russo was installing new outriggers at the time of his accident?

A. No.

Q. Where did you get the information that that's the work that Matt was performing at the time he was hurt?

A. From Matt himself.

Q. And this is during your telephone conversation with him when he was in the hospital?

A. Yes.

Q. Was there anything of which you're aware in the SunderLand policy that prevented the captain of the boat from carrying out some of the repairs recommended by the surveyor when performing the survey at a request of an underwriter such as NAS?

A. Repeat that again, please, Joe.

Q. Sure. I'm going to ask you to assume that at the time Matt Russo got hurt that the out- -- new outriggers were being installed on the recommendation of the surveyor, Marine Safety Consultants.

Assuming that to be so, was there anything under the SunderLand pol. -- strike that -- anything under the NAS policy that was in existence at the time of Matt Russo's accident from August '03 to August '04 that said, if Matt Russo gets hurt while performing this work, there is no coverage?

MR. LANGER: Objection. Calls for a legal conclusion.

Q. Your understanding of the policy.

A. My understanding of the pol. -- he would not be covered if he --

Q. Why not?

A. -- got hurt. Because he specifically asked me to drop all crew -- crew P&I from his policy on

136

1 the Mary & Josephine to save money.

2 Q. Can you show me anything in the policy itself

3 or any endorsements issued in connection with

4 the policy that support your position?

5 A. No.

6 Q. Now, assuming there is nothing in writing to

7 support your position that there was no crew

8 coverage for Matt Russo, was there anything in

9 the policy or any of the endorsements to the

10 policy that prevented a crew member aboard the

11 vessel, such as Matt Russo, from carrying out

12 the recommendations made by the surveyor?

13 MR. LANGER: You mean, regardless of

14 whether there was coverage or not?

15 Q. Let's start with regardless of whether there

16 was coverage or not.

17 A. It -- it's his vessel. He could do whatever he

18 wants.

19 Q. Okay. And assuming there was nothing in the

20 policy that says Matt Russo was not covered at

21 the time he was hurt, is there anything else in

22 the policy that says, if Matt Russo was injured

23 during the work -- doing the work recommended

24 by the surveyor, he would not be covered?

137

1 A. Not that I'm aware of.

2 Q. Is it fair to say that, in your dealings with

3 the Mary & Josephine Corporation insofar as

4 insurance coverage being placed for the vessel

5 Mary & Josephine, you dealt primarily with Matt

6 Russo?

7 A. Correct.

8 Q. Did you deal with Sal Russo at all?

9 A. No.

10 Q. Have you ever had a conversation with Sal

11 Russo?

12 A. No.

13 Q. How about Matt Russo's brother Gerry, have you

14 ever -- ever had any conversations with Gerry

15 concerning placement of insurance coverage

16 aboard the -- or for the fishing vessel Mary &

17 Josephine?

18 A. No.

19 Q. Is it fair to say that if Matt Russo needed to

20 contact somebody on behalf of the underwriter,

21 he would contact someone in your office, OMI?

22 A. Yes.

23 Q. And you would be the principal contact for Matt

24 Russo?

138

ey
13, 2005North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

the vessel has not been fishing since May 1st, 2003. He forgot to call us earlier. The account did renew on 8/13/03."

Q. So where does it say that Matt Russo is asking that the company issue an endorsement for port risk coverage different than was issued the previous year, as reflected in Oc- - in -- in Exhibit No. 6?

A. It -- it doesn't. I think he followed up with a phone call to Lynn.

Q. You're saying that Matt Russo called Lynn sometime after October 3rd, 2003?

A. No. I think it was on October 3rd.

Q. So the same day that you spoke to Matt Russo about what his desires were with coverage, you believe that Matt Russo also spoke to Lynn Houde?

A. Yes.

Q. Why do you say that?

A. Because I think I instructed Matt to call Lynn to tell her direct. I might have been on the road, driving in my vehicle. And I probably told him, why don't you call Lynn and -- which we do often because Lynn is the one that would

144

be taking care of that end of the policy.

Q. And did Lynn tell you that she, in fact, spoke with Matt Russo on October 3rd, 2003?

A. Yes.

Q. And what did she tell you that he said to her?

A. He reiterated what he said to me, that he didn't want any crew coverage.

Q. Have you seen any communications between Lynn Houde and -- strike that. First of all, who is Tracy, Tracy Tate at SM?

A. That's Sunderland.

Q. Okay. Other than this fax, Exhibit 4, dated October 3rd, 2003, have you seen any communications between Lynn Houde and Sunderland Marine referencing the desire of Matt Russo, on behalf of M & J Corporation, to eliminate crew coverage for P&I while the vessel was on port risk?

A. I haven't. But I very rarely do see -- see correspondence between Lynn and Sunderland.

Q. So are you saying there may be additional correspondence that's not been produced in connection with this case?

MR. LANGER: Objection.

145

A. I believe I reviewed his application.

Q. Did you look at the policy itself?

A. I don't recollect if I did or not.

Q. Insofar as the filing system as maintained in the offices of OMI in the time frame of December '05, would there be a -- do you have a separate folder per policy year per vessel? Or how do you guys file?

A. We have a -- a file that contains all the policy years, a single file.

Q. Okay. And when a vessel owner such as -- strike that. Are you saying there was a single file for the M & J -- Mary & Josephine Corporation for the fishing vessel Mary & Josephine from the very beginning of the placement of the coverage through the last policy issued?

A. Yes.

Q. Okay. Did you look through that file prior to sending the e-mail on December 5th, 2003, Exhibit No. 2?

A. I -- I probably did.

Q. Okay. And is it fair to say you saw no written endorsement in connection with that policy that

146

A. There could be.

Q. Do you know why any --

A. I don't see how -- why --

Q. -- additional --

A. No.

Q. -- correspondence has not been produced that's --

A. I don't think --

Q. -- been requested?

A. I don't know --

MR. LANGER: Objection.

A. -- if there is correspondence. As I said, I don't see it. So I don't know what's there.

Q. Okay. Let's go to your e-mail to Janet of December 5th, 2003. Do you have that in front of you, Mr. McKey?

A. Yes. I do.

Q. Okay. Prior to sending this e-mail, what, if anything, did you review in connection with the policy of insurance issued through your office for the Mary & Josephine Corporation regarding the fishing vess- -- fishing vessel Mary & Josephine for the policy year Aug- -- August '03 to August '04?

147

A. I believe I reviewed his application.

Q. Did you look at the policy itself?

A. I don't recollect if I did or not.

Q. Insofar as the filing system as maintained in the offices of OMI in the time frame of December '05, would there be a -- do you have a separate folder per policy year per vessel? Or how do you guys file?

A. We have a -- a file that contains all the policy years, a single file.

Q. Okay. And when a vessel owner such as -- strike that. Are you saying there was a single file for the M & J -- Mary & Josephine Corporation for the fishing vessel Mary & Josephine from the very beginning of the placement of the coverage through the last policy issued?

A. Yes.

Q. Okay. Did you look through that file prior to sending the e-mail on December 5th, 2003, Exhibit No. 2?

A. I -- I probably did.

Q. Okay. And is it fair to say you saw no written endorsement in connection with that policy that

148

3, 2005

North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

eliminated crew coverage for that policy year, P&I crew coverage?

That's correct.

Now, let's go to the third paragraph of your letter. You testified that it was your opinion when you wrote this e-mail that there was no insurance to cover Matt Russo's accident?

A. Yeah.

Q. Then why did you go on to say, quote, "If all goes well, hopefully, we can keep this claim within reason given the nature of the injuries," end quote?

A. Because what we were prepared to do, as an agency and with Sunderland, was to help Matt out financially regardless of whether he was covered or not, which we do --

Q. Did you do that?

A. -- which we do often.

Q. Did you do that in this case?

A. Matt rebuffed our efforts.

Q. Did you ever pay any of Matt Russo's medical bills?

A. Not that I'm aware of.

Q. In what way did Matt rebuff your efforts to

help him out, as you do in cases like this?

A. He went and hired an attorney.

Q. Oh. You've never done that, Mr. McKey? That's withdrawn.

A. I didn't say it was a bad thing. I just said he went and hired an attorney.

MR. PETTINGELL: Lawyers have to eat too, you know. Off the record.

Q. Isn't it true, Mr. McKey, that you -- when you wrote this e-mail to Sunderland on December 5th, 2003, it was your opinion that there was coverage under the P&I policy for Matt Russo's injuries? Isn't that a fact?

A. No. I'd say it was ambiguous.

Q. Did you indicate any of that ambiguity in the body of your e-mail? And Exhibit --

MR. LANGER: Objection.

Q. -- we're referring to Exhibit No. 2.

MR. LANGER: The document speaks for itself.

A. This is taken -- if it was taken in the context of which this was sent to Janet, then it takes on a different meaning as it is on paper.

Q. So tell me the context in which you sent this

150

1 e-mail to Janet.

2 A. Well, there was some ambiguity as to far as -- as far as if Matt was an owner. As she

3 mentions in here from correspondence with 4 Marine Safety, they was under the impression 5 that Matt was an owner. I went and looked up 6 his policy and -- and straightened out that 7 situation, said he was not a owner, that Sal 8 was a hundred-percent owner.

9 Q. Why was that significant?

10 A. Excuse me?

11 Q. Why was that significant, whether Matt was an 12 owner or not?

13 A. Because, if he was an owner, he probably 14 wouldn't have been covered under the policy.

15 Q. Was that typical in connection with insuring 16 fishing vessels out of the port of Gloucester 17 in that time frame?

18 A. I wouldn't specify Gloucester. It was 19 significant to most fishing vessels.

20 Q. Okay. Most fishing vessels that were insured 21 through your agency in the time frame of 2003 22 excluded P&I coverage for owners who were also 23 crew members?

149

1 A. Yes.

2 Q. Okay. And you learned that Matt Russo was not 3 an owner, but he was a crew member?

4 A. Correct.

5 Q. In what other way was -- give me the other 6 contexts in which -- strike the question.

7 Other than addressing the issue of whether Matt 8 Russo was or was not a part-owner of the 9 corporation called the Mary & Josephine 10 Corporation, what else were you attempting to 11 convey to Janet at Sunderland Marine by your 12 e-mail of December 5th, 2003?

13 A. I was just trying to clarify. When the boat 14 was operational, they were insured for three to 15 four men, including Matt, for the policy when 16 it was operational, and to also let them know 17 that he wasn't a -- he wasn't an owner. Excuse 18 me. I was just making clarifications on the 19 policy which she might have asked for earlier.

20 Q. Okay. Can we agree that during the period of 21 time that the policy did cover Matt Russo as 22 captain of the vessel that he was one of the 23 three or four men that was contemplated to 24 be -- to be within the scope of the P&I

McVey
December 13, 2005North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

there is no crew P&I coverage?

A. Yes.

Q. Okay. Who did you direct to issue such a communication?

A. Probably, Ms. Houde.

Q. And do you remember when that was?

A. We've had so many changes with this particular vessel that I'm really -- couldn't pinpoint it.

Q. Have you ever seen any such document issued by Ms. Houde to the owners of the Mary & Josephine Corporation dated before December 2 ..

December 3, 2003 to the effect that when your vessel is on port risk, there is no crew P&I coverage?

A. I don't recollect that specifically.

Q. All right. If there was such a document, you'd expected it to be in the -- you'd expect it to be in the file for the Mary & Josephine Corporation as regards the fishing vessel Mary & Josephine. Correct?

A. I would expect that. Yeah.

Q. I believe, in response to one of

A. Mr. Pettingell's questions, you've indicated that, in your conversation with Matt Russo in

1 early October 2003 when he told you that he did
 2 not want any P&I coverage at all for his crew
 3 while the vessel was at port risk that you told
 4 him you would -- you would take care of it.
 5 Was that -- was that your testimony?

6 A. I believe so. Yes.

7 Q. Okay. And how would you go about taking care
 8 of it?

9 A. I would reiterate his information to Lynn.
 10 Q. I thought you told me before that you told Matt
 11 Russo to call Lynn himself?

12 A. I did. We both did.

13 Q. Okay. So you're saying you said to Lynn that
 14 Matt Russo doesn't want any coverage for -- P&I
 15 coverage for crew while the vessel's in port
 16 and that Matt Russo, you understood, also
 17 called Lynn and told her that himself?

18 A. That's correct.

19 Q. Other than your conversation with Matt Russo on
 20 October 3rd, 2003 or thereabouts wherein you
 21 claim that he communicated to you his desire to
 22 remove all P&I crew coverage for the Mary &
 23 Josephine while the vessel was on port risk,
 24 did you have any other conversations with him

161

1 regarding the insurance for the vessel prior to
 2 December 3rd, 2003?
 3 A. I don't believe so.

4 Q. Do you know if Lynn Houde did?
 5 A. I'm not sure.

6 Q. Has she ever told you that she did?
 7 A. No.

8 Q. Did Bill Scola indicate to you whether he ever
 9 discussed underwriting issues with Matt Russo
 10 between October 3rd, 2003 and December 3rd,
 11 2003?

12 A. No.

13 Q. Have you ever seen anything issued from
 14 Mr. Scola to the M & J Corporation, Mary &
 15 Josephine Corporation, prior to December 5th,
 16 2003 to the effect that while the vessel is on
 17 port risk coverage, there is no P&I crew
 18 coverage for any of the crew members?

19 A. Not that I can recollect.

20 Q. MR. ABRAMOVITZ: Thank you. That's all I
 21 have.

22 Q. MR. PETTINGELL: I have a couple of
 23 follow-up on things that you touched on.

24 REDIRECT EXAMINATION

163

1 BY MR. PETTINGELL:
 2 Q. I'm showing you a document, sir. And I
 3 would --

4 Q. MR. LANGER: Shall we mark it?

5 Q. I would suggest to you that this is a copy of
 6 the policy that was issued for Policy Year 3.
 7 MR. LANGER: Before you ask any more
 8 questions, let's just mark it so that we'll
 9 have a record of what it is he's talking about.
 (Insurance policy effective 8/13/03 to
 10 8/13/04 marked as McVey Exhibit No. 7.)

11 Q. While you're looking at it, Policy Year 3 --
 12 we -- you've already testified, would run from
 13 August 13th of 2003 to August 13th of 2004.

14 A. Yes. Sorry.

15 Q. So the document which has been marked as
 16 Exhibit 7, would you agree that is a copy of
 17 the policy that was issued for Policy Year 3?
 18 MR. LANGER: Look it over and make sure
 19 it's a complete copy as you understand it, if
 20 you know.

21 A. Some of it's not very legible. But . . .

22 Q. MR. PETTINGELL: While he's look- . . .

23 looking, for the record, the policy contains,

24

13, 2005

164

"nu" "nu" "nu" Mary & Josephine Corp., et al.

166

at the top, Policy No. OMM000003-01.
 MR. LANGER: I think that's a 0, not a zero.

MR. PETTINGELL: I think you're correct.

OML.

(Pause.)

A. It appears to be a -- a complete policy.
 Q. All right. Now, looking -- looking at the last

page on Exhibit 7, where the language appears,

"This endorsement changes the policy," do you

see that?

A. Under "Changes"?

Q. The last page of this.

A. Yeah.

Q. Now, the last page, would you agree, has got

"Policy Endorsement Number 3"?

A. Yes.

Q. All right. And that has a policy change

effective August 13th, 2003?

A. Yes.

Q. What does that mean?

A. It means that it's covered for port risk only.

Q. No, no, no. The fact that the change is

effective on August 13, 2003, what does that

mean?

A. I don't understand what you mean, what does it

mean.

Q. Well, let me try this. Policy changes effective August 13, '03, do you see that

language?

A. Yes.

Q. Does that mean to you that whatever changes are contained in the endorsement are effective as of August 13, 2003?

A. Yeah. Correct.

Q. Okay. Now, coming down to the bottom, can you see the date that the policy was issued --

the -- excuse me -- Endorsement 3 was issued?

A. Yes.

Q. When was it issued?

A. What it says here is February 16th, '04.

Q. All right. So we have -- and is this signed by someone?

A. It's signed by Frank Ostrom.

Q. Who's Mr. Ostrom?

A. He is the former president of OML.

Q. Okay. Did he hold that position or a position

in OML on February 16, 2004?

1. A. Yes.
 2. Q. And, to your knowledge, did he have signing authority for purposes of signing endorsements, policy endorsements?

3. A. Yes.
 4. Q. And by virtue of his signature, he was an authorized representative of whatever company he was issuing the endorsement for?

5. A. Yes.
 6. Q. And what's the basis of your statement that he was issuing the endorsement for?
 MR. LANGER: Objection.

7. A. Yes.
 8. Q. All right. That's your understanding though?

9. A. It's my understanding. Yes.

10. A. All right. Now, prior to the issuance and effective date -- prior to the effective date of Endorsement No. 3, would you agree with me that, as far as the policy language itself is concerned, the vessel was not covered for port

risk?

11. A. Now, there's a distinction I'm making here.

12. Q. I'm talking about the policy language as opposed to the effect of the endorsement. I'm 13. A. opposed to the effect of the endorsement was issued the 14. Q. saying, before the endorsement was issued the 15. Q. coverage would have been available -- that 16. Q. would have been available to the vessel would 17. Q. be what is contained in the policy, not 18. Q. counting Endorsement 3.

19. A. Yes.
 20. Q. Do you agree with that?

21. A. MR. LANGER: Objection. It asks for a 22. Q. All right. And under the language of Policy 23. Q. No. ... we'll call it Policy No. 3, Exhibit 7, 24. Q. prior to the issuance of Endorsement No. 3 and the effective date of Endorsement No. 3, was there available, under the terms of the policy, what we have been referring to as crew P&I coverage?

25. A. MR. LANGER: Objection. Calls for a legal 26. Q. conclusion.

27. A. I would say no.

28. Q. You would say no?

29. A. Yeah.

30. Q. And what's the basis of your statement that

31. Q. there would not be?

32. A. Because that's what our client asked that there

33. Q. not be.

, 13, 2005

North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

I don't think you understood my question, and that's my fault. The policy, if you look at

Exhibit 7, was issued from -- had -- had effective dates from August 13th of 2003 to

August 13th, 2004; is that correct?

A. Yeah. Correct.

Q. And would you agree that the policy provisions

contain the -- the scope of the coverage that would be available under the policy before any

changes in -- in -- in coverage are made?

A. Yes.

Q. All right. So -- and -- and I understand it's your testimony that Mr. Russo requested that

there be no P&I coverage while the vessel was on port risk. I understand that's your

testimony.

And, in fact, Endorsement No. 3 to

Exhibit 7, the last page, states that "It is hereby understood and agreed in consideration

of a return premium of \$3,117 that the F/V Mary

& Josephine is covered for Port Risk only--no

fishing effective August 13, 2003 to

December 21, 2003." Right?

A. Correct.

168

1 Q. And Endorsement No. 3, I take it, puts into
2 effect what you understood Mr. Russo told you
3 he wanted in the October telephone conversation
4 that you had?

A. That's correct.

Q. All right. Before that conversation took
place, before Endorsement No. 3 went into
effect -- and it went into effect, by its
terms, on August 13th at the beginning of the
policy period -- the balance of the policy
contained the original policy terms and
provisions of the -- of the policy. Right?

A. Yes.

Q. And under the policy terms as written before
the effective date of Endorsement No. 3, was
there coverage under the policy for what we
have been terming crew P&I coverage?MR. LANGER: Objection. Seeks a legal
conclusion. Go ahead. The do -- I mean, the
document speaks for itself. If you're asking
him for --MR. PETTINGELL: Well, I'm asking him for
his opinion, his understanding.

MR. LANGER: He's -- he's told you it

1 didn't.

2 MR. PETTINGELL: Well, I asked the --

3 MR. LANGER: What more do --

4 MR. PETTINGELL: -- the bas --

5 MR. LANGER: -- you want?

6 MR. PETTINGELL: Please. I -- I don't want

7 to argue with you. I asked the basis for that.
And it was apparent to me he didn't understand

8 my question. So I'm trying it again.

9 MR. PETTINGELL: Repeat your answer.

10 Q. Well, don't repeat your answer. Please answer

11 the question. If it's a different answer, then
give a different answer. If it's the same,
give the same.

12 A. The same answer I gave before.

13 Q. And that is?

14 A. Can you read it back to me?

15 A. (Question read back.)

16 A. I would say no.

17 Q. Okay. If Endorsement 3 had never issued and
18 was not a part of the policy -- I'm changing
19 things; okay -- would there have been coverage
20 under Policy No. 3, marked as Exhibit 7, for
21 what has been termed as crew P&I cover?

169

170

1 MR. LANGER: Objection. Calls for a legal
2 conclusion. The document speaks for itself.

3 A. I would say no.

4 Q. And why is that?

5 A. Because we gave Matt Russo a return premium
6 from May until policy issue at August on his
7 asking for it. So, therefore, this policy
8 wouldn't be the same.9 Q. Okay. You're saying, by virtue of your
10 returning the premium, that was reflective of a
11 change in coverage as stated in Endorsement No. 3
12 to Exhibit 7?13 MR. LANGER: Objection to the form of the
14 question.15 A. It would be prior to Endorsement 3, I believe,
16 the way you're talking about --

17 Q. Okay.

18 A. -- and by virtue of his asking us.

19 Q. All right. That's fair. How about if he
20 hadn't asked you and you didn't return a
21 premium, would there have been crew P&I cover
22 under the policy?

23 A. Yes.

24 Q. And there would have been coverage -- rather

by
13, 2005North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

172

than have you flip through the pages because they're not numbered -- there would have been crew cover for how many crew?

A. Three to four men.
Q. And it would have included -- well, doesn't it say a little more?

A. It says "excluding Owners."

Q. And since we've established that Mr. Russo was not an owner, if Mr. Russo was part of that crew, assuming Endorsement 3 had not issued, there would have been coverage for him under this policy as well?

MR. LANGER: Objection. Seeks a legal conclusion.

A. That's -- that's correct.

Q. Now, in Exhibit 7, Endorsement No. 3 was issued. And Endorsement No. 3 states, "In consideration of a return premium of" -- a stated amount -- "the Mary & Josephine is covered for Port Risk only-no fishing effective August 13 to December 21, 2003." Do you agree?

A. Yes.
Q. Would you find the place in Exhibit 7 in Policy No. 3 where it states that there is no crew

173

1 coverage?
2 MR. LANGER: While it's on port risk, you
3 mean?

MR. PETTINGELL: Yes.

MR. LANGER: Is there anything in the policy that says that if it's on port risk, there's no crew coverage?

A. I don't believe so. But I -- I don't think it says anything in here regarding that.

MR. PETTINGELL: Thank you. All right. I have nothing further.

MR. ABROMOVITZ: Just a couple of other questions.

RECORD-EXAMINATION

BY MR. ABROMOVITZ:

Q. You indicated that Mr. Ostrow was the former president of your company?

A. Yes.
Q. Where is he now?

A. Mr. Ostrow passed away.
Q. When did he pass away?

A. April.
Q. Did you -- I'm sorry. I wasn't aware of that. Have you ever seen anything from Mr. Ostrow to

174

anybody on behalf of Mary & Josephine Corporation to the effect of a position on behalf of OMNI or Sunderland or NAS that when a vessel is on port risk coverage, there is no crew P&I coverage?

A. No.

MR. ABROMOVITZ: Thank you. That's all I have.

MR. LANGER: I have a couple of questions.

CROSS-EXAMINATION

BY MR. LANGER:

Q. Mr. McKey, was your conversation with Mr. Russo on October 3rd of 2003 the first time he talked to you about putting the boat on port risk for what Mr. Pettingell has called Policy Year No. 3?

A. I believe so.

Q. And, in fact, he asked you to put it on port risk retroactive, in fact, back into part of Policy Year No. 2?

A. That's correct.

Q. And you carried out his wishes by passing that information along to Ms. Houdre?

A. That's correct.

175

1 Q. And you believe that, at some point either on
2 or shortly after October 3rd of 2003, Mr. Russo
3 called Ms. Houdre?

A. I'm pretty sure he called her.

Q. When you talked to Mr. Russo on October 3rd, around October 3rd, did he tell you that he would -- would be working on his boat or the Mary & Josephine, doing recommendations provided by a surveyor?

A. No.

Q. Were you aware at any time prior to hearing of Mr. Russo's accident that there were any surveyor recommendations that had to be completed on the Mary & Josephine?

A. I wasn't aware of any.

Q. Who -- who makes decisions regarding whether a particular claim is covered by the policy?

A. I would say, the insurance companies, the underwriters.

Q. You -- you don't make that decision?

A. No.

Q. Just so we're clear, I think you testified -- I just want to be clear; I'm referring to Exhibit No. 6 -- the reference to the crew complement